IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6227 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

I.K. YADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6227 of 2002
MISS HARSHAL PANDYA for MR PARESH UPADHYAY for Petitioner No. 1
MR PD BHATE, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/03/2004

ORAL JUDGEMENT

1. In this petition the petitioner's grievance is that despite having given him deemed date of promotion to the post of Police Inspector, his request

for the further grant of deemed date in the cadre of Deputy Superintendent of Police [Dy. S.P.] has not been acceded to and that has caused gross injustice to him.

1.2. The petitioner joined the service in the Police Department in the month of July 1965 as Police Sub Inspector. In the year 1976 his immediate junior came to be promoted on the post of Police Inspector. However, the petitioner was not granted promotion and it was only in the month of December 1980 he was promoted to the said post. The petitioner made several representations requesting the concerned authorities to grant him deemed date of promotion to the post of Police Inspector. Initially his request was turned down. However, vide order dated 8th February, 1996 passed by the Deputy Secretary, Home Department it was thought fit to grant deemed date to the petitioner in the cadre of Police Inspector and deemed date was given as 20th May, 1976, that is the date on which his immediate junior one Mr. M.S. Pawar was promoted. In the seniority list of the Police Inspectors Mr. Pawar's name was at serial no. 160. Hence, the petitioner was placed between serial no. 159 and 160 and was given no. 159-A. It further appears that by the time the petitioner was given the deemed date, his junior Mr. Pawar was further promoted to the post of Deputy Superintendent of Police in the year 1992. The petitioner was left out. He, therefore, made several representations to his superiors as well as to the Home Department. However, no response was received. Hence, the petitioner was constrained to approach this Court.

2. This Court vide order dated 19th July, 2002 admitted the matter and issued notice as to interim relief making it returnable on 16th August, 2002. In the meanwhile the respondent was directed to consider the representations made by the petitioner dated 29th March, 1996, 26th December, 1996 and 5th January, 2002. The respondent, however, sprang a surprise on the petitioner by not only turning down the representation that had been made for granting deemed date in the cadre of Dy.S.P., but also cancelled the grant of deemed date in the cadre of Police Inspector as 20th May 1976 holding it to be void ab-initio. The petitioner, therefore, by amending the petition has also challenged the said order.

3. Miss Harshal Pandya, learned advocate appearing for Mr. Paresh Upadhyay for the petitioner has submitted that the petitioner was already granted deemed date in the cadre of Police Inspector. However, in the matter of further promotion, his junior had stolen march over him as he was promoted in the year 1992 and the

petitioner was subsequently promoted vide order dated 13th September, 1996. According to her, the respondent having given the deemed date of promotion in the cadre of Police Inspector, could not have denied grant of deemed date of promotion to the petitioner to the post of Dy.S.P. She has further submitted that there was no material against the petitioner so as to deny him promotion to the post of Dy. S.P. atleast at the time when his immediate junior was promoted. She has also submitted that order dated 31st July, 2002 has been passed only because the petitioner has approached this Court. According to her, when the respondent had already granted deemed date after a lapse of about 6 years, it could not have been withdrawn without even affording to the petitioner an opportunity of hearing. In other words, according to Miss Pandya, the said order is violative of principles of natural justice. Lastly she has submitted that order dated 31st July, 2002 is required to be quashed and set aside and the petitioner deserves grant of deemed date in the cadre of Dy.S.P.

3.1. As against that, Mr. P.D. Bhate, Ld. AGP has submitted that though the petitioner on earlier occasion was granted deemed date by the respondent, later on while considering grant of deemed date in the cadre of Dy.S.P. it came to the notice of the respondent that Departmental Promotion Committee [D.P.C.] in the year 1976-77 had not found the petitioner suitable for promotion and again in the year 1979 only recommendation to try on the said post was made and, therefore, he was not promoted then. There was, therefore, no point in granting him deemed date of promotion of 20th May, 1976. He has further submitted that the respondent was well within his bounds to revoke his earlier order and to pass order afresh denying the deemed date to the petitioner. According to him, this petition has no merit and it deserves to be dismissed.

4. Having gone through the record of the petition and having carefully considered the submissions made by Miss Pandya and Mr. Bhate, it appears tat on earlier occasion the respondent had acceded to the request of the petitioner by order dated 8th February, 1996 and had recommended grant of deemed date in the cadre of Police Inspector after taking into consideration the representation that was made by the petitioner. It may be noted here that on earlier occasions the petitioner's representations dated 9th July, 1990 and 1st October, 1994 were not accepted. In view of the respondent's order the Director General of Police vide order dated 25th March, 1996 granted deemed date to the

petitioner in the cadre of Police Inspector and the deemed date was given as 20th May, 1976, i.e. the date on which his junior Mr. Pawar was promoted. It is, therefore, presumed that when such order was passed by the respondent, which was duly acted upon by the highest authority of the Police Department of the State, Director General of Police and the deemed date had been granted to the petitioner, the requisite criteria and the relevant record for this purpose must have been kept in view by them. It is a matter of surprise that after lapse of six years and that too when the petitioner approached this, with a grievance that his representation for deemed date in the cadre of Dy.S.P. is not being considered, respondent has come out with a case that on earlier occasion the deemed date was wrongly granted to him, in view of the fact that the D.P.C. in the month of August 1976, December 1977 and again in December 1979 had not found him fit for promotion. It is also a matter of surprise that in the said order reliance has been placed by the respondent on rule 54 (6) of the Gujarat Police Manual, Volume-I. It is not the case of the respondent that on earlier occasion the grant of deemed date to the petitioner in the cadre of Police Inspector was erroneously given. Curiously enough the respondent has observed in the impugned order that deemed date of promotion to the post of Police Inspector was given because even after rejection of his earlier representations the petitioner had continued to make repeated representations. In the present circumstances the respondent and in particular the Under Secretary, Home Department has proceeded on the footing as if nothing had happened on previous occasion and the case of the petitioner for grant of deemed date was being considered for the first time by him not only for the post of Dy.S.P. but also for the post of Police Inspector. It may be noted here that the petitioner was making representation to the concerned authorities including the respondent since the month of March 1996. The respondent found time to take into consideration the representations after six years and that too when this Court directed him to do so. It may be also noted here that the petitioner had been granted deemed date in the cadre of Police Inspector as 20th May, 1976 vide order dated 8th February, 1996. The same is now sought to be upset by the respondent himself after a period of almost six and half years. When the petitioner had made all these representations and when he was called upon to decide the representation by virtue of the order of this Court, it was his bounden duty to atleast afford an opportunity to the petitioner of hearing. That has not been done. It appears that there is some substance in

the submission of Miss Pandya to the effect that this is nothing but a retaliatory measure taken against the petitioner. Mr. Bhate has taken me through the affidavit-in-reply filed by the respondent, which has been sworn by the very officer, who has passed order dated 31st July, 2002. Nowhere it is stated in the affidavit-in-reply that the Home Department had committed glaring error in granting deemed date to the petitioner in the cadre of Police Inspector. If any order adverse to the interest of the petitioner was to be passed by the respondent, it was necessary to atleast grant him an opportunity to represent his case before him and give him opportunity of hearing. May be in normal circumstances such course may not be resorted to, but looking to the peculiar circumstances of this case, atleast hearing was required to be granted.

5. In view of the aforesaid, order dated 31st July, 2002 is required to be quashed and set aside and it is hereby ordered to be quashed and set aside. However, so far as the prayer with regard to grant of deemed date in the cadre of Dy.S.P. is concerned, for the present I am not inclined to grant it. The respondent is directed to reconsider the case of the petitioner for grant of deemed date in the cadre of Dy.S.P. by affording to him an opportunity of hearing. Such exercise is to be carried out by the respondent on or before 30th April, 2004. In the event of any adverse result, the petitioner would be at liberty to file fresh petition.

Petition is allowed accordingly. Rule made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.